

## **Assembly Bill No. 1674**

### **CHAPTER 535**

An act to amend Sections 25270.2, 25270.6, and 25283.5 of, and to add Section 25281.6 to, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 29, 2010. Filed with  
Secretary of State September 29, 2010.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1674, Saldaña. Hazardous substances: storage tanks.

(1) Existing law generally regulates the storage of hazardous substances in underground storage tanks, including imposing certain requirements on those underground storage tanks installed on or after July 1, 2003, and before July 1, 2004, or on or after July 1, 2004. Existing law exempts from the underground storage tank requirements an underground storage tank that meets all of the specified criteria, one of which is that the applicable local agency determines, without objection from the State Water Resources Control Board, that the underground storage tank meets or exceeds the requirements generally imposed on underground storage tanks under existing law.

This bill, with respect to the criteria that an underground storage tank is required to meet for an exemption, would delete the requirement that the board not object to the local agency's determination. To qualify for the exemption, the bill also would provide that if the underground storage tank is installed on or after July 1, 2003, the local agency would be required to determine that the tank meets or exceeds the requirements for underground storage tanks installed after January 1, 1984, except for certain in lieu conditions for motor vehicle fuel tanks, and that any portion of a vent line, vapor recovery line, or fill pipe that is beneath the surface of the ground is subject to regulation as a pipe.

This bill would additionally exempt a tank if it is located in a below-grade structure and connected to an emergency generator tank system and meets specified conditions, from the requirements imposed upon underground storage tanks.

(2) The Aboveground Petroleum Storage Act defines terms for its purposes, including defining "tank facility" as one or more aboveground storage tanks, including any piping that is integral to the tanks, that contain petroleum and that are used by a single business entity at a single location or site.

This bill, instead, would define "tank facility" for those purposes as one of those tanks that is used by an owner or operator, rather than a single business entity, at a single location or site.

(3) The Aboveground Petroleum Storage Act authorizes the Unified Program Agency (UPA) to waive a specified fee, that pays the necessary and reasonable costs incurred by the UPA in administering the act, when a state or local government agency submits a tank facility statement, the submission of which triggers payment of the fee.

This bill would delete the authorization for the UPA to waive that fee for a state or local government agency that submits the tank facility statement.

(4) Since existing law requires local agencies to enforce the underground and aboveground storage tanks provisions, the bill would impose a state-mandated local program by imposing new duties upon local agencies.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25270.2 of the Health and Safety Code is amended to read:

25270.2. For purposes of this chapter, the following definitions apply:

(a) “Aboveground storage tank” or “storage tank” means a tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground. “Aboveground storage tank” does not include any of the following:

(1) A pressure vessel or boiler that is subject to Part 6 (commencing with Section 7620) of Division 5 of the Labor Code.

(2) A tank containing hazardous waste, as described in subdivision (g) of Section 25316, if the Department of Toxic Substances Control has issued the person owning or operating the tank a hazardous waste facilities permit for the storage tank.

(3) An aboveground oil production tank that is subject to Section 3106 of the Public Resources Code.

(4) Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers, or capacitors, if the oil-filled electrical equipment meets either of the following conditions:

(A) The equipment contains less than 10,000 gallons of dielectric fluid.

(B) The equipment contains 10,000 gallons or more of dielectric fluid with PCB levels less than 50 parts per million, appropriate containment or diversionary structures or equipment are employed to prevent discharged oil from reaching a navigable water course, and the electrical equipment is visually inspected in accordance with the usual routine maintenance procedures of the owner or operator.

(5) A tank regulated as an underground storage tank under Chapter 6.7 (commencing with Section 25280) of this division and Chapter 16

(commencing with Section 2610) of Division 3 of Title 23 of the California Code of Regulations.

(6) A transportation-related tank facility, subject to the authority and control of the United States Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the United States Environmental Protection Agency, dated November 24, 1971, set forth in Appendix A to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) “Board” means the State Water Resources Control Board.

(c) (1) “Certified Unified Program Agency” or “CUPA” means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) “Participating Agency” or “PA” means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) (A) “Unified Program Agency” or “UPA” means the CUPA, or its participating agencies to the extent that each PA has been designated by the CUPA, pursuant to a written agreement, to implement and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404. The UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce the requirements of this chapter.

(B) After a CUPA has been certified by the secretary, the unified program agency shall be the only agency authorized to enforce the requirements of this chapter.

(C) This paragraph does not limit the authority or responsibility granted to the board and the regional boards by this chapter.

(d) “Operator” means the person responsible for the overall operation of a tank facility.

(e) “Owner” means the person who owns the tank facility or part of the tank facility.

(f) “Person” means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. “Person” also includes any city, county, district, the University of California, the California State University, the state, any department or agency thereof, and the United States, to the extent authorized by federal law.

(g) “Petroleum” means crude oil, or a fraction thereof, that is liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per square inch absolute pressure.

(h) “Regional board” means a California regional water quality control board.

(i) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, or disposing into the environment.

(j) “Secretary” means the Secretary for Environmental Protection.

(k) “Storage” or “store” means the containment, handling, or treatment of petroleum, for a period of time, including on a temporary basis.

(l) “Storage capacity” means the aggregate capacity of all aboveground tanks at a tank facility.

(m) “Tank facility” means one or more aboveground storage tanks, including any piping that is integral to the tanks, that contain petroleum and that are used by an owner or operator at a single location or site. For purposes of this chapter, a pipe is integrally related to an aboveground storage tank if the pipe is connected to the tank and meets any of the following:

(1) The pipe is within the dike or containment area.

(2) The pipe is between the containment area and the first flange or valve outside the containment area.

(3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.

SEC. 2. Section 25270.6 of the Health and Safety Code is amended to read:

25270.6. (a) (1) On or before January 1, 2009, and on or before January 1 annually thereafter, each owner or operator of a tank facility subject to this chapter shall file with the UPA a tank facility statement that shall identify the name and address of the tank facility, a contact person for the tank facility, the total storage capacity of the tank facility, and the location, size, age, and contents of each storage tank that exceeds 10,000 gallons in capacity and that holds a substance containing at least 5 percent of petroleum. A copy of a statement submitted previously pursuant to this section may be submitted in lieu of a new tank facility statement if no new or used storage tanks have been added to the facility or if no significant modifications have been made. For purposes of this section, a significant modification includes, but is not limited to, altering existing storage tanks or changing spill prevention or containment methods.

(2) Notwithstanding paragraph (1), an owner or operator of a tank facility that submits a business plan, as defined in subdivision (e) of Section 25501, to the UPA, and that complies with Sections 25503.5, 25505, and 25510, satisfies the requirement in paragraph (1) to file a tank facility statement.

(b) Each year, commencing in calendar year 2010, each owner or operator of a tank facility who is subject to the requirements of subdivision (a) shall pay a fee to the UPA, on or before a date specified by the UPA. The governing body of the UPA shall establish a fee, as part of the single fee system implemented pursuant to Section 25404.5, at a level sufficient to pay the necessary and reasonable costs incurred by the UPA in administering this chapter, including, but not limited to, inspections, enforcement, and administrative costs. The UPA shall also implement the fee accountability program established pursuant to subdivision (c) of Section 25404.5 and the regulations adopted to implement that program.

SEC. 3. Section 25281.6 is added to the Health and Safety Code, to read:

25281.6. (a) A tank located in a below-grade structure and connected to an emergency generator tank system, as defined in subdivision (c) of Section 25281.5, is exempt from the requirements of this chapter if all of the following conditions are met:

(1) The tank is situated above the surface of the floor in such a way that all of the surfaces of the tank can be visually inspected by either direct viewing, through the use of visual aids, including, but not limited to, mirrors, cameras, or video equipment, or monitored through the use of a continuous leak detection and alarm system capable of detecting unauthorized releases of hazardous substances.

(2) For a single-walled tank, in addition to all the other requirements in this section, the structure, or a separate discrete secondary structure able to contain the entire contents of the liquid stored in the tank, is sealed with a material compatible with the stored product.

(3) The owner or operator of the tank conducts visual inspections of the tank each time the emergency generator tank system is operated, or at least once a month, and maintains a log of inspection dates for review by the local agency.

(4) The tank or combination of tanks in the below-grade structure has a cumulative capacity of 1,100 gallons or less of diesel fuel.

(b) Nothing in this section excludes an emergency generator tank system from other applicable laws, codes, and regulations.

(c) The exclusion provided by this section does not apply if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of underground storage tanks contained in below-grade structures that are connected to emergency generator tank systems.

SEC. 4. Section 25283.5 of the Health and Safety Code is amended to read:

25283.5. (a) An underground storage tank that meets all of the following criteria is exempt from the requirements of this chapter:

(1) All exterior surfaces of the tank, including connected piping, and the floor directly beneath the tank, can be monitored by direct viewing.

(2) The structure in which the tank is located is constructed in such a manner that the structure, at a minimum, provides for secondary containment of the contents of the tank, as determined by the local agency designated pursuant to Section 25283.

(3) The owner or operator of the underground storage tank conducts weekly inspections of the tank and maintains a log of inspection results for review by the local agency designated pursuant to Section 25283, as requested by the local agency.

(4) Except as provided in paragraph (5), the local agency designated pursuant to Section 25283 determines that the underground storage tank meets requirements that are equal to or more stringent than those imposed by this chapter.

(5) If the underground storage tank is installed on or after July 1, 2003, notwithstanding Sections 25290.1 and 25290.2, the local agency determines the tank meets both of the following:

(A) Requirements that are equal to, or more stringent than, the requirements of paragraphs (1) to (6), inclusive, of subdivision (a) and subdivisions (b) to (i), inclusive, of Section 25291.

(B) Notwithstanding Section 25281.5, any portion of a vent line, vapor recovery line, or fill pipe that is beneath the surface of the ground is subject to regulation as a “pipe,” as defined in subdivision (m) of Section 25281.

(b) This section does not prohibit a local fire chief or an enforcement agency, as defined in Section 16006, from enforcing the applicable provisions of the local or state fire, building, or electrical codes.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.